IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.1313 OF 2005

"BEST" Workers' Union
and another ...Appellants

Vs.

Sharad Rao & Ors. ...Respondents

Mr. V.A.Thorat,Advocate General with Mr.Anil Singh i/b
Mr.D.R.Shah for the Appellants.
Mr. K.K.Singhavi,Senior Advocate and Mr.Jocquim Reis i/b
M.D.Nasle for the Respondent No.1.
Mr.U.J.Desai for Respondent No.2.

CORAM: A.S.OKA, J.

DATED: JANUARY 20, 2005.

P.C.:

1. By this Appeal from Order the Appellants-original Plaintiffs have taken exception to the order dated 19th January 2005 passed by the learned Judge of the City Civil Court, Mumbai. By the order impugned, the learned Judge has declined to grant ad-interim relief in favour of the Appellants. The learned Judge by exercising power under Section 9-A of Code of Civil Procedure,1908 has framed preliminary issue as to the jurisdiction of the City Civil Court on the basis of objection raised by the Respondents.

2. The Appellant No.1 is a trade Union duly registered under the Trade Union Act, 1926. Appellant No.2 is stated to be the Secretary of the Appellant No.1. The Respondent No.1 was

admittedly the working President of Appellant No.1-Union. According to the Appellants, Respondent No.1 has been suspended from the post of working President. The challenge in the suit is to the notice dated 5th January 2005 issued by Respondent No.1 by which he is purported to convene a General Body Meeting of Appellant No.1 on 20th January 2005 i.e. today. The challenge is also to Respondent No.2/Defendant No.2 acting as the Returning Officer. It appears that some of the members allegedly submitted a requisition under Clause 14-(B)(b) of Constitution of Appellant No.1 calling upon the President, the Working President and the General Secretary to convene a general body meeting and to hold the election of the office bearers and managing committee two days before the general body meeting. On the basis of said requisition the Respondent No.1 by notice dated 5th January 2005 has convened a general body meeting at 5.00 p.m.today for transacting the business mentioned in the agenda incorporated in the said notice. The Appellants filed present suit on 17th January 2005.

3. In the said suit, a Notice of Motion was taken out praying for interim injunction restraining the Respondents-Defendants from acting upon the notice dated 5th January 2005 and from holding general body meeting. A prayer was also made for temporary injunction restraining the Respondent No.2 from acting as a Returning Officer in the process of election. The parties were heard by the learned

Trial Judge on 19th January 2005 for considering the prayer of ad-interim relief in the said Notice of Motion.

4. At the time of hearing of the Notice of Motion, the Respondent No.2 filed an Affidavit. In the said Affidavit he stated that he has declared the results of election on 18th January 2005 at 11.00 a.m. and the results have been intimated to all the members and to the Office bearers of Appellant No.1-Union. It is stated in the Affidavit that the results have been displayed on the notice board.

5. The learned Counsel for the Appellants submitted that Respondent No.1 has been suspended from the post of working President on 14th January 2005. Therefore, the meeting convened at his instance cannot be held. He further submitted that Respondent No.1 could not have convened an Annual General meeting on the basis of the requisition. He tried to distinguish between an annual general body meeting and a general body meeting and submitted that on the basis of requisition only a general body meeting can be convened and not an annual general body meeting. He submitted that the election can be held only in the annual general body meeting and therefore in a meeting convened by the Respondent No.1 on the basis of a requisition, an election cannot be held. He submitted that though the Respondent No.2 claims to have declared the results of the election, a formal declaration of the results will take place only in the meeting scheduled to

be held today. Therefore, the declaration of results of election on 18th January 2005 is of no consequence. He submitted that in the requisition, a request was made to convene general body meeting only for holding election of office bearers and therefore meeting which is convened on the basis of requisition can transact only the business which is mentioned in the requisition and no other business.

6. The learned Counsel for the Appellants further submitted that the bar of jurisdiction under Section 28 (1-A) of Trade Unions Act, 1926 will not be attracted in case of the present suit. He, therefore, submitted that as the notice was ex-facie illegal, a case for grant of ad-interim relief was made out. Without prejudice to his rights and contentions he submitted that even if meeting is allowed to be held today, effect should not be given to the decision taken in the meeting and to the election results declared in the meeting.

7. The learned Counsel for Respondent No.1 submitted that the suit itself was not maintainable in view of Section 28(1-A) of the said Act of 1926. The learned Counsel for Respondent No.1 further submitted that the election process was started and has been completed on 18th January 2005 and therefore no question arises of grant of any ad-interim relief. On instructions he stated that no resolution for amendment of the Constitution of Appellant No.1 will be considered in the meeting which is scheduled to be held

today. He submitted that the result of the election is already declared. He, therefore, submitted that no interference is called for.

8. The learned Trial Judge has noted that the result of the election has been declared on 18th January 2005. The learned Trial Judge has also noted that the working President of the Appellant No.1-Union under the Constitution of the Union was empowered to convene any general Body meeting on the basis of requisition submitted to him. The learned Judge also recorded that the suit was instituted on 17th January 2005 for challenging the notice issued on 5th January 2005. He also considered the fact that there was a serious challenge to the maintainability of the suit and to the jurisdiction of the City Civil Court. After having considered all the aspects, he declined to grant ad-interim injunction.

9. The Respondent No.2 has declared results of the election. Even according to the Appellants, what remains to be done is only a formal declaration of the results in the meeting. As the suit stands today, there is no specific challenge to the declaration of the results by the Respondent No.2. It is not in dispute that the Appellant No.1-Union has membership of about 21,000. It is not the case of the Appellants that they were not aware about the notice dated 5th January 2005. Still they have waited till 17th January 2005 to file the suit. The programme of the election was also declared on

10th January 2005 and as per the programme election was to be held on 19th January 2005. In my view, the delay on the part of the Appellants in approaching the City Civil Court is fatal to the case of the Appellants in so far as prayer for ad-interim relief is concerned. As noted earlier, the learned Counsel for the Respondent No.1 has made a statement that any resolution for amending the Constitution will not be considered in today's meeting. The said statement is accepted. When arrangements have been made for holding meeting of Appellant no.1-Union and members are more than 20,000, few hours before the scheduled time of the meeting no ad-interim relief can be granted as regards holding of the meeting. It is not in dispute that the Respondent No.1 was the working President on 5th January 2005 and resolution of suspension has been allegedly passed on 14th January 2005. In so far as result of the election is concerned, it is for the Appellants to take out appropriate proceedings for challenging the same.

10. Grant of ad-interim relief of injunction is discretionary. I do not find any error in the discretion exercised by the learned Judge while refusing to grant ad-interim relief. In so far as the submissions regarding maintainability and jurisdiction of the City Civil Court are concerned, I am not recording any finding as a preliminary issue has already been framed by the learned Judge.

11. The proceedings of the meeting which will be held today and the formal declaration of results will be naturally subject to further orders which may be passed by the learned Judge who is seized of the suit.

12. Subject to observations made above, Appeal is dismissed with no order as to costs.

13. The learned Trial Judge is directed to expedite the hearing of the Notice of Motion and the same shall be disposed of within a period of four weeks from today. The Notice of Motion will be decided on its own merits without being influenced by the impugned order and confirmation thereof by this Court.

Judge.